

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CRIMINAL NO. 1:00CR9

UNITED STATES OF AMERICA

VS.

DAVID FRANKLIN RUTHERFORD

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ORDER

**THIS MATTER** is before the Court *sua sponte*.

The Defendant was sentenced by the undersigned on December 12, 2000, to a prison term of 240 months for conspiracy to possess with intent

to distribute cocaine base. **Judgment in a Criminal Case, filed**

**December 21, 2000.** On May 20, 2009, the Probation Office filed a

Supplement to the Defendant's presentence report pursuant to the Crack

Cocaine Guideline Amendment. **Supplement to the Presentence**

**Report, filed May 20, 2009.** The Probation Office advises that pursuant to

Guidelines § 5G1.1, the sentence imposed may not be below the statutorily

required minimum sentence. ***Id. at 1.*** If Amendment 706 had been in

place at the time of Defendant's sentence, the guideline range would have

been the mandatory minimum sentence of 240 months; therefore, the new amendment has no effect on the Defendant's sentence. *Id.* Because this recommendation is adverse to the Defendant, the Court will require counsel be appointed to represent the Defendant and appointed counsel shall file an appropriate response.

**IT IS, THEREFORE, ORDERED** that the Federal Defender appoint counsel for the Defendant forthwith.

**IT IS FURTHER ORDERED** that appointed counsel file response to the Supplement to the Presentence Report within 45 days from entry of this Order.

The Clerk is directed to provide appointed counsel with a copy of this Order.

Signed: May 20, 2009



Lacy H. Thornburg  
United States District Judge

